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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 569 of 1997

in

SPECIAL CIVIL APPLICATION No 3294 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

RS PATEL

Versus

DY EXECUTIVE ENGINEER

Appearance:

MR IS SUPEHIA for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 19/06/97

ORAL JUDGEMENT(Per:Thakker.J)

This Letters Patent Appeal is filed against the order passed by the learned single Judge summarily dismissing the petition filed by the appellant-petitioner against an order of transfer. It appears that the petitioner was working as Laboratory Assistant at Viramgam. Pursuant to his request, he was ordered to be transferred to Balasinor by order dated on June 29,1996. It is the case of the appellant that on July 9,1996, he reported for duty at Balasinor but he was not permitted to resume duty and in the meanwhile an order was passed by which he was transferred to Mehsana. Again, the petitioner was transferred by an order dated September 9,1997 to Surendranagar. The petitioner being aggrieved by these orders, has approached this court by filing Special Civil Application.

2. When the Special Civil Application came up for hearing before the learned single Judge, after hearing both the parties ,the learned single Judge dismissed the petition summarily inter alia observing that against the transfer order, a suit was filed by the petitioner-plaintiff being Civil Suit No. 269 of 1996 in the court of Civil Judge ,(SD) at Nadiad and also filed an application for interim relief under Order 39 Rule 1, Civil Procedure Code and that application was rejected by an order dated January 30,1992. Against the said order an appeal was also preferred and that appeal was withdrawn by the appellant as also the suit. The learned single Judge did not think it proper to entertain the petition on the ground that the appellant petitioner had already availed of the alternative remedy and since the suit was withdrawn, it was not a fit case to grant the reliefs prayed for in the petition.

3. We have heard Mr. Supehia learned counsel for the petitioner. He submitted that there is an error apparent on the face of the record committed by the learned single Judge in not appreciating the fact that a suit was filed against order of transfer which has taken place earlier i.e. in July 1996 but thereafter again the appellant was transferred . Against the impugned order, no suit was filed and it was not pending when the petition came up for hearing and it was, therefore, not correct to say that the petitioner had availed of

alternative remedy and that the petition did not require consideration on that ground. A grievance was also made that in the petition, number of prayers were made including payment of salary, but the learned single Judge has not dealt with the said point and did not express any opinion on that aspect. A grievance was also made that when the appeal as well as the suit were withdrawn, the learned single Judge ought to have entertained the petition by exercising extra ordinary powers under article 226 of the Constitution of India. For the said purpose reliance was placed on the decisions of the Division Bench of this Court in the case of Amarsing Ratansing vs. Union of India & anor. 1983 GLH 343 and also on the decision of Trivedi Harshadrai P. vs. Bhavnagar University & ors. in Spl.C.A.No. 926 of 1981 decided on January 31,1992. On merits it was submitted that there were no administrative reasons or grounds to effect the transfer and this is a case of frequent transfer. Mr. Supehia submitted that though it was stated in the order that the work of the appellant was unsatisfactory, no notice was issued seeking for his explanation or opportunity of hearing was given to the appellant - petitioner and hence the order is violative of the principles of natural justice and fair play. On all these grounds, Mr. Supehia submitted that the appeal is required to be entertained.

3. We do not see any reason or ground to interfere with the order passed by the learned single Judge.

4. So far as the jurisdiction of this court in transfer matter is concerned, it is well settled that the jurisdiction is very much limited. The learned single Judge has considered the fact that the appellant has filed a suit and the same was withdrawn. Now the fact remains that the application exh.5 was disposed of by an order dated January 30,1997 and hence it cannot be said that at the time when application exh.5 was disposed , the intervening transfer orders were not passed. Again, an appeal was preferred by the appellant against the order passed below exh.5 and said appeal was also withdrawn by the appellant.

5. Even otherwise also, we are of the view that by not entertaining the petition, the learned single Judge has not committed any error or law apparent on the fact of the record. It is also required to be borne in mind that though the orders were passed in July 1996 and September 1996 respectively, the learned counsel for the appellant is not in a position to state as to whether the appellant has reported for duty in pursuance of those

orders until now. Again he conceded that though a representation was made for the transfer of the appellant in May 1996 and in pursuance of the said representation, the appellant was ordered to be transferred to Balasinor in July and September 1996, subsequent orders were passed and yet no representation has been made so far. As per the decision reported in AIR 1981 SC 1577. in the case of Shanti Kumari vs. Regional Deputy Director, Health Servicesn Patna Division, Patna , ordinarily if an employee has some problems, difficulties or unavoidable circumstances which can be brought to the notice of the authority, that can be done by filing a representation and that too by reporting at the place where the employee is transferred. In this case no representation is made pointing out circumstances or difficulties experienced by the appellant-petitioner. In our opinion, the transfer order is not by way of punishment or penalty. It is settled law that transfer is an incident of service and while passing the order of transfer, no notice, or explanation is necessary.

4. We also do not see any reason to interfere with the order with regard to payment of salary during the intervening period as it depends upon the facts as to whether the appellant has complied with those orders or whether he was on leave which was granted by the competent authority and by not granting that relief, the learned Judge has not committed any error.

5. The learned counsel for the appellant now states that the appellant is ready to make representation to appropriate authorities and, therefore, appropriate directions may be given. It is open to the appellant to make such representation. If such representation is made it is expected of the authorities to decide the same as expeditiously as possible and in accordance with law. Letters Patent Appeal stands dismissed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)